

IN THE SENATE

SENATE BILL NO. 1321

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO WORKER'S COMPENSATION; AMENDING SECTION 72-209, IDAHO CODE, TO
2 PROVIDE FOR A CLEAR AND CONVINCING EVIDENTIARY STANDARD WITH RESPECT TO
3 INTENT TO HARM IN A CASE INVOLVING PHYSICAL AGGRESSION AND TO MAKE TECH-
4 NICAL CORRECTIONS.
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6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 72-209, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 72-209. EXCLUSIVENESS OF LIABILITY OF EMPLOYER. (1) Subject to the
10 provisions of section 72-223, Idaho Code, the liability of the employer
11 under this law shall be exclusive and in place of all other liability of the
12 employer to the employee, his spouse, dependents, heirs, legal representa-
13 tives or assigns.

14 (2) The liability of an employer to another person who may be liable for
15 or who has paid damages on account of an injury or occupational disease or
16 death arising out of and in the course of employment of an employee of the
17 employer and caused by the breach of any duty or obligation owed by the em-
18 ployer to such other person, shall be limited to the amount of compensation
19 for which the employer is liable under this law on account of such injury,
20 disease, or death, unless such other person and the employer agree to share
21 liability in a different manner.

22 (3) The exemption from liability given an employer by this section
23 shall also extend to the employer's surety and to all officers, agents,
24 servants and employees of the employer or surety, provided that such exemp-
25 tions from liability shall not apply in any case where the injury or death is
26 proximately caused by the ~~wilful~~ willful or unprovoked physical aggression
27 of the employer, its officers, agents, servants or employees, which phys-
28 ical aggression must include clear and convincing evidence the employer,
29 its officers, agents, servants, or employees either intended to harm the
30 employee or engaged in conduct knowing, at the time that the employee's work
31 assignment was made, that injury or death to the employee would occur. T~~he~~
32 loss of such exemption ~~applying~~ applies only to the aggressor and shall not
33 be imputable to the employer unless provoked or authorized by the employer,
34 or the employer was a party thereto.